

New Mexico statutes that provide for mandatory minimum sentences

**Section 30-2-1 NMSA 1978, regarding murder in the first degree.**

The penalty is: life imprisonment (eligible for a parole hearing after serving 30 years of the sentence); or life imprisonment without possibility of release or parole. Read in conjunction with: Section 31-20A-2 NMSA 1978, regarding sentencing for capital offenders; and Section 31-21-10 NMSA 1978, regarding parole authority and procedure. (New Mexico repealed the death penalty in 2009).

**Section 30-6-1 NMSA 1978, regarding intentional abuse of a child less than 12 years of age that results in the death of the child.** The penalty is life imprisonment (eligible for a parole hearing after serving 30 years of the sentence). Read in conjunction with: Section 31-18-15 NMSA 1978, regarding sentencing authority for noncapital felonies; and Section 31-21-10 NMSA 1978, regarding parole authority and procedure.

**Section 30-9-11 NMSA 1978, regarding criminal sexual penetration.**

Whoever commits aggravated criminal sexual penetration is guilty of a first degree felony for aggravated criminal sexual penetration (See Subsection C of Section 30-9-11 NMSA 1978). The penalty is life imprisonment (eligible for a parole hearing after serving 30 years of the sentence). Read in conjunction with: Section 31-18-15 NMSA 1978, regarding sentencing authority for noncapital felonies; and Section 31-21-10 NMSA 1978, regarding parole authority and procedure.

Whoever commits criminal sexual penetration in the second degree when the victim is a child who is thirteen to eighteen years of age is guilty of a second degree felony for a sexual offense against a child and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a minimum term of imprisonment of three years, which shall not be suspended or deferred. (See Subsection E of Section 30-9-11 NMSA 1978).

**Section 30-9-13 NMSA 1978, regarding criminal sexual contact of a minor.** Whoever commits criminal sexual contact of a minor in the second degree is guilty of a second degree felony for a sexual offense against a child and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall

be sentenced to a minimum term of imprisonment of three years, which shall not be suspended or deferred. (See Subsection B of Section 30-9-13 NMSA 1978).

**Section 31-18-16 NMSA 1978, regarding use of a firearm in the commission of a non-capital felony.** When a separate finding of fact by the court or jury shows that a firearm was used in the commission of a noncapital felony, the basic sentence of imprisonment prescribed for the offense in Section 31-18-15 NMSA 1978 shall be increased by one year, and the sentence imposed by this subsection shall be the first year served and shall not be suspended or deferred. (See Subsection A of Section 31-18-16 NMSA 1978)

For a second or subsequent noncapital felony in which a firearm is used, the basic sentence of imprisonment prescribed in Section 31-18-15 NMSA 1978 shall be increased by three years, and the sentence imposed by this subsection shall be the first three years served and shall not be suspended or deferred. (See Subsection B of Section 31-18-16 NMSA 1978)

**Section 31-18-17 NMSA 1978, regarding habitual offenders.** A person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not who has incurred one prior felony conviction that was part of a separate transaction or occurrence or conditional discharge under Section 31-20-13 NMSA 1978 is a habitual offender and his basic sentence shall be increased by one year. The sentence imposed pursuant to this subsection shall not be suspended or deferred, unless the court makes a specific finding that the prior felony conviction and the instant felony conviction are both for nonviolent felony offenses and that justice will not be served by imposing a mandatory sentence of imprisonment and that there are substantial and compelling reasons, stated on the record, for departing from the sentence imposed pursuant to this subsection. (See Subsection A of Section 31-18-17 NMSA 1978)

A person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not who has incurred two prior felony convictions that were parts of separate transactions or occurrences or conditional discharge under Section 31-20-13 NMSA 1978 is

a habitual offender and his basic sentence shall be increased by four years. The sentence imposed by this subsection shall not be suspended or deferred. (See Subsection B of Section 31-18-17 NMSA 1978)

A person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not who has incurred three or more prior felony convictions that were parts of separate transactions or occurrences or conditional discharge under Section 31-20-13 NMSA 1978 is a habitual offender and his basic sentence shall be increased by eight years. The sentence imposed by this subsection shall not be suspended or deferred. (See Subsection C of Section 31-18-17 NMSA 1978)

**Section 31-18-23 NMSA 1978, regarding three violent felony convictions.** When a defendant is convicted of a third violent felony, and each violent felony conviction is part of a separate transaction or occurrence, and at least the third violent felony conviction is in New Mexico, the defendant shall, in addition to the sentence imposed for the third violent conviction, be punished by a sentence of life imprisonment. The life imprisonment sentence shall be subject to parole pursuant to the provisions of Section 31-21-10 NMSA 1978 (eligible for a parole hearing after serving 30 years of the sentence). (See Subsection A of Section 31-18-23 NMSA 1978)

**Section 31-18-25 NMSA 1978, regarding two violent sexual offense convictions.** When a defendant is convicted of a second violent sexual offense, and each violent sexual offense conviction is part of a separate transaction or occurrence, and at least the second violent sexual offense conviction is in New Mexico, the defendant shall, in addition to the punishment imposed for the second violent sexual offense conviction, be punished by a sentence of life imprisonment. The life imprisonment sentence shall be subject to parole pursuant to the provisions of Section 31-21-10 NMSA 1978 (eligible for a parole hearing after serving 30 years of the sentence). (See Subsection A of Section 31-18-25 NMSA 1978)

Notwithstanding the provisions of Subsection A of this section, when a defendant is convicted of a second violent sexual offense, and each violent sexual offense conviction is part of a separate transaction or occurrence, and the victim of each violent sexual offense was less than thirteen years of age at the time of the offense, and at least the second violent sexual offense conviction is in New Mexico, the defendant shall be punished by a sentence of life imprisonment without the possibility of parole. (See Subsection B of Section 31-18-25 NMSA 1978)

**Section 66-8-102 NMSA 1978, regarding second and subsequent DWI offenses.** Upon a second conviction, an offender shall be sentenced to a jail term of not less than ninety-six consecutive hours, not less than forty-eight hours of community service and a fine of five hundred dollars (\$500). In addition to those penalties, when an offender commits aggravated driving under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than ninety-six consecutive hours. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional seven consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement. (See Paragraph (1) of Subsection F of Section 66-8-102 NMSA 1978)

Upon a third conviction, an offender shall be sentenced to a jail term of not less than thirty consecutive days, not less than ninety-six hours of community service and a fine of seven hundred fifty dollars (\$750). In addition to those penalties, when an offender commits aggravated driving under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than sixty consecutive days. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional sixty consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement. (See Paragraph (2) of Subsection F of Section 66-8-102 NMSA 1978)

Upon a fourth conviction pursuant to this section, an offender is guilty of a fourth degree felony and, notwithstanding the provisions of Section

31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of eighteen months, six months of which shall not be suspended, deferred or taken under advisement. (See Subsection G of Section 66-8-102 NMSA 1978)

Upon a fifth conviction pursuant to this section, an offender is guilty of a fourth degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of two years, one year of which shall not be suspended, deferred or taken under advisement. (See Subsection H of Section 66-8-102 NMSA 1978)

Upon a sixth conviction pursuant to this section, an offender is guilty of a third degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of thirty months, eighteen months of which shall not be suspended, deferred or taken under advisement. (See Subsection I of Section 66-8-102 NMSA 1978)

Upon a seventh or subsequent conviction pursuant to this section, an offender is guilty of a third degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of three years, two years of which shall not be suspended, deferred or taken under advisement. (See Subsection J of Section 66-8-102 NMSA 1978)

